REGISTERED No. M. 4631

KERALA GAZETTE

EXTRAORDINARY

PUBLISHED BY AUTHORITY

Vol. V] Trivandrum, Thursday 16th June 1960 / 26th Jyaistha 1882 [No. 42.

NOTIFICATION

No. 1843/LA. 4/60. *16th June 1960.*

The following Bill together with the Statement of Objects and Reasons and the Financial Memorandum attached to it, is published, as ordered by the Speaker under Rule 73 of the Rules of Procedure and Conduct of Business in the Assembly.

D. Tirumalai Iyengar,
Secretary,
Legislative Assembly.

Legislature Secretariat,
Trivandrum.

PRINTED AND PUBLISHED BY
THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM,
1960.

L. A. Bill No. 13 of 1960.

THE KERALA SHOPS AND COMMERCIAL ESTABLISHMENTS BILL, 1960.

CONTENTS

THE KERALA SHOPS AND COMMERCIAL ESTABLISHMENTS BILL, 1960.

A

BILL

to consolidate and amend the law relating to the regulation of conditions of work and employment in shops and commercial establishments in the State of Kerala.

Preamble.—WHEREAS it is expedient to consolidate and amend the law relating to the regulation of conditions of work and employment in shops and commercial establishments in the State of Kerala;

BE it enacted in the Eleventh Year of the Republic of India as follows:—

1. *Short title, extent and commencement.*—(1) This Act may be called the Kerala Shops and Commercial Establishments Act, 1960.

(2) It extends to the whole of the State of Kerala.

(3) It shall come into force on such date as the Government may, by notification in the Gazette, appoint.

(4) It shall apply, in the first instance, to the following areas:—

(i) the city of Trivandrum,

(ii) all the municipalities constituted under the Madras District Municipalities Act, 1920 (Madras Act V of 1920) in its application to the Malabar district referred to in section 5 (2) of the States Reorganisation Act, 1956, the Travancore District Municipalities Act, 1116 and the Cochin Municipal Act, XVIII of 1113,

(iii) all areas within the jurisdiction of Panchayats which under rule 2 of Schedule III of the Madras Village Panchayats Act, 1950 (Madras Act X of 1950) in its application to the Malabar district referred to in section 5 (2) of the States Reorganisation Act, 1956, should be deemed to be constituted under the said Madras Village Panchayats Act, 1950, and which immediately before the commencement of that Act were classified by the Government as major panchayats and all areas within the jurisdiction of panchayats constituted or reconstituted under that Act which, for the time being, are classified by the Government as class 1 panchayats under section 5 (1) (a) of that Act, and

(iv) all other areas in the State to which the Travancore-Cochin Shops and Establishments Act, 1125 or the Madras Shops and Establishments Act, 1947, has been applied before the commencement of this Act.

(5) The Government may, after giving three months' notice of its intention of so doing, by notification in the Gazette, apply the provisions of this Act or any of them to such other areas as may be specified.

CHAPTER I

PRELIMINARY

2. *Definitions.*—In this Act, unless the context otherwise requires—

(1) "apprentice" means a person, aged not less than twelve years, whom an employer employs in his service for training by himself or by any other person for any trade or calling;

(2) "child" means a person who has not completed his fourteenth year;

(3) "closed" means not open for the service of any customer or open to any business connected with the establishment;

(4) "commercial establishment" means a commercial or trading or banking or insurance establishment, an establishment or administrative service in which the persons employed are mainly engaged in office work, hotel, restaurant, boarding or eating house, cafe or any other refreshment house, a theatre or any other place of public amusement or entertainment and includes such other establishment as the Government may, by notification in the Gazette, declare to be a commercial establishment for the purposes of this Act;

(5) "day" means the period of twenty-four hours beginning at mid-night:

Provided that in the case of an employee whose hours of work extend beyond mid-night, day means the period of twenty-four hours beginning when such employment commences;

(6) "employee" means a person wholly or principally employed in, and in connection with, any establishment and includes an apprentice;

(7) "employer" means a person owning, or having ultimate control over the affairs of, an establishment and includes the manager, agent or other person acting in the general management or control of an establishment;

(8) "establishment" means a shop or a commercial establishment;

(9) "inspector" means an Inspector appointed under this Act;

(10) "leave" means leave provided for in Chapter III of this Act;

(11) "opened" means opened for the service of any customer or to any business connected with the establishment;

(12) "period of work" means the time during which an employee is at the disposal of the employer;

(13) "prescribed" means prescribed by rules made under this Act;

(14) "prescribed authority" means the authority prescribed by rules made under this Act;

(15) "shop" means any premises where any trade or business is carried on or where services are rendered to customers, and includes offices, store-rooms, godowns or warehouses, whether in the same premises or otherwise, used in connection with such trade or business but does not include a commercial establishment or a shop attached to a factory where the persons employed in the shop are allowed the benefits provided for workers under the Factories Act, 1948 (Central Act 63 of 1948);

(16) "spread over" means the period between the commencement and the termination of the work of an employee on any day;

(17) "week" means the period of seven days beginning at mid-night on Saturday night or such other night as may be approved in writing for a particular area by the prescribed authority;

(18) "year" means a year commencing on the first day of January.

3. *Exemptions.*—(1) Nothing contained in this Act shall apply to—

(a) persons employed in any establishment in a position of management;

(b) persons whose work mainly involves travelling, and persons employed as canvassers and caretakers and whose names do not appear in the muster rolls;

(c) establishments under the Central or any State Government, local authorities, the Reserve Bank of India and cantonment authorities;

(d) establishments in mines and oil fields;

(e) establishments in bazaars in places where fairs or festivals are held temporarily for a period not exceeding 15 days at a time;

(f) establishments which, not being factories within the meaning of the Factories Act, 1948 (Central Act 63 of 1948) are in respect of matters dealt with in this Act, governed by a separate law for the time being in force in the State of Kerala.

(2) Nothing contained in section 10 shall apply to—

(a) hospitals and other institutions for the treatment or care of the sick, the infirm, the destitute or the mentally unfit;

(b) such chemists' or druggists' shops, as the Government may, by general or special order, specify;

(c) clubs and residential hotels, hostels attached to schools or colleges, and establishments maintained in boarding schools, in connection with the boarding and lodging of pupils and resident masters;

(d) stalls and refreshment rooms at railway stations, docks, wharves or ports.

4. *Power of Government to apply Act to exempted persons or establishments.*— Notwithstanding anything contained in section 3, the Government may, by notification in the Gazette, apply all or any of the provisions of this Act to any class of persons or establishments mentioned in that section, other than those mentioned in clauses (c) and (f) of sub-section (1) and modify or cancel any such notification.

5. *Exemptions.*—The Government may, if they are satisfied that public interest so requires or that the circumstances of the case are such that it would be just and proper to do so having regard to the nature and capacity of the establishment, by notification in the Gazette, exempt either permanently or for any specified period, any establishment or class of establishments in any area or persons or class of persons to which or to whom this Act applies, from all or any of its provisions subject to such restrictions and conditions as the Government deem fit.

CHAPTER II

HOURS OF WORK

6. *Daily and Weekly Hours.*—No employee in any establishment shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week:

Provided that the total number of hours of work including overtime, shall not exceed ten hours in any day, except on days of stock taking and preparation of accounts and the total number of hours of overtime shall not exceed fifty for any quarter.

7. *Extra wages for overtime work.*—Where an employee works in any establishment for more than eight hours in any day or for more than forty-eight hours in any week he shall in respect of such overtime work be entitled to wages at the rate of twice the ordinary rate of wages.

Explanation.—For the purposes of this section, "ordinary rate of wages" means the basic wages plus such allowances, including the cash equivalent of the advantage accruing through the supply of meals and the concessional sale to employees of foodgrains and other articles, as the employee is for the time being entitled to, but does not include bonus.

8. *Intervals for rest.*—The period of work of an employee in an establishment each day shall be so fixed that no period shall exceed four hours and that no such person shall work for more than four hours before he has had an interval for rest of at least one hour.

9. *Spread over.*—The period of work of an employee in an establishment shall be so fixed that, inclusive of his interval for rest, they shall not spread over more than ten and a half hours in any day.

10. *Opening and closing hours.*—(1) No establishment shall, on any day, be opened earlier than and closed later than such hour as may be fixed by a general or special order of the Government made under sub-section (2):

Provided that any customer who was being served or was waiting to be served in any establishment at the hour fixed for its closing may be served during the quarter of an hour immediately following such hour.

(2) The Government may, by general or special order, fix the time at which any establishment or class of establishments shall be opened or closed in any local area.

11. *Weekly holidays.*—(1) Every employee in an establishment shall be allowed in each week a holiday of one whole day.

(2) No deduction shall be made from the wages of any employee in an establishment on account of any day on which a holiday has been allowed in accordance with this section; and if such person is employed on the basis that he would not ordinarily receive wages for such day, he shall nonetheless be paid for such day the wages he would have drawn had the holiday not been allowed on that day.

CHAPTER III

HOLIDAYS AND LEAVE

12. *Application of Chapter.*—The provisions of this chapter shall not operate to the prejudice of any rights to which an employee may be entitled under any other law or under the terms of any award, agreement or contract of service:

Provided that where such award, agreement or contract of service provides for a longer leave with wages or weekly holidays than provided in this Chapter the employee shall be entitled to such longer leave or weekly holidays, as the case may be.

Explanation.—For the purpose of this Chapter leave shall not, except as provided in section 13, include weekly holidays or holidays for festivals or other similar occasions.

13. *Annual leave with wages.*—(1) Every employee in an establishment shall be entitled, after twelve months' continuous service in that establishment, to holidays with wages for a period of 12 days, in the subsequent period of twelve months, provided that such holidays with wages may be accumulated up to a maximum period of twenty-four days.

(2) Every employee in an establishment shall also be entitled during every twelve months of continuous service (a) to leave with wages for a period not exceeding 12 days on the ground of any sickness incurred or accident sustained by him and (b) to casual leave with wages for a period not exceeding 12 days on any reasonable ground.

(3) If an employee entitled to any holidays under sub-section (1) is discharged by his employer before he has been allowed the holidays, or if having applied for and been refused the holidays, he quits his employment before he has been allowed the holidays, the employer shall pay him the amount payable under this Act in respect of the holidays.

(4) If an employee entitled to any leave under sub-section (2) is discharged by his employer when he is sick or suffering from the result of an accident, the employer shall pay him the amount payable under this Act in respect of the period of the leave to which he was entitled at the time of his discharge, in addition to the amount, if any, payable to him under sub-section (3).

(5) An employee shall be deemed to have completed a period of twelve months' continuous service within the meaning of this section, notwithstanding any interruption in service during those twelve months brought about (i) by sickness, accident, or authorised leave (including authorised holidays), not exceeding ninety days in the aggregate for all three; or (ii) by a lockout; or (iii) by a strike which is not an illegal strike; or (iv) by intermittent periods of involuntary unemployment not exceeding thirty days in the aggregate, and authorised leave shall be deemed not to include any weekly holiday allowed under this Act which occurs at the beginning or end of an interruption brought about by the leave.

(6) An employee in a hostel attached to a school or college or in an establishment maintained in a boarding school in connection with the boarding and loadging of pupils and resident masters shall be allowed the privileges referred to in sub-sections (1) to (5) reduced however proportionately to the period for which he was employed continuously in the previous year or to the period for which he will be employed continuously in the current year, as the case may be; and all references to periods of holidays or of leave in sub-sections (1) and (2) shall be construed accordingly, fractions of less than one day being disregarded.

(7) Government shall have power to issue directions as to the manner in which the provisions of sub-section (6) shall be carried into effect in all or any class of cases or in any particular case.

14. *Wages during leave period.*—For the leave allowed to him under section 13 an employee shall be paid at a rate equal to the daily average of his total full-time earning, exclusive of any

overtime earnings and bonus, but inclusive of dearness allowance and the cash equivalent of any advantage accruing by the supply of meals and by the sale, by the employer of foodgrains and other articles at concessional rates, for the days on which he worked during the month immediately preceding his leave.

15. *Power of Inspectors to act for employees.*—Any Inspector may institute proceedings on behalf of any employee to recover any sum required to be paid by an employer under this Chapter which the employer has not paid.

16. *Power to exempt establishments.*—Where the Government are satisfied that the leave rules applicable to employees in an establishment provide benefits which in its opinion are not less favourable than those for which this Chapter makes provision, it may, by written order, exempt the establishment from all or any of the provisions of this Chapter, subject to such conditions as may be specified in the order.

Chapter IV

WAGES

17. *Application and amendment of the Payment of Wages Act.*—(1) Notwithstanding anything contained in the Payment of Wages Act, 1936 (Central Act 4 of 1936), herein referred to as the said Act, the Government may, by notification in the Gazette, direct that, subject to the provisions of sub-section (2) the said Act or any of the provisions thereof or of the rules made thereunder shall apply to all or any class of employees in establishments to which this Act applies.

(2) On the application of the provisions of the said Act to any establishment under sub-section (1), the Inspector appointed under this Act shall be deemed to be the Inspector for the purpose of the enforcement of the provisions of the said Act within the local limits of his jurisdiction.

18. *Notice of Dismissal.*—(1) No employer shall dispense with the services of an employee employed continuously for a period of not less than six months, except for a reasonable cause and without giving such employee at least one month's notice or wages in lieu of such notice, provided however that such notice shall not be necessary where the services of such employee are dispensed with on a charge of misconduct supported by satisfactory evidence recorded at an inquiry held for the purpose.

(2) Any employee whose services are dispensed with may appeal to such authority and within such time as may be prescribed either on the ground that there was no reasonable cause for dispensing with his services or on the ground that he had not been guilty of misconduct as held by the employer.

(3) The appellate authority may, after giving notice in the prescribed manner to the employer and the employee, dismiss the appeal or direct the reinstatement of the employee with or without wages for the period he was kept out of employment or direct payment of compensation without reinstatement or grant such other relief as it deems fit in the circumstances of the case.

(4) In directing the reinstatement of an employee the appellate authority shall also direct the payment of such amount of compensation as may be specified by him in case the employer fails to reinstate the employee in accordance with the directions.

(5) The decision of the appellate authority shall be final and binding on both the parties, not be liable to be questioned in any Court of Law and be given effect to with in such time as may be specified in the order of the appellate authority.

(6) Any compensation required to be paid by the employer under sub-sections (3) and (4) but not paid by him shall be recoverable as arrears of land revenue under the provisions of the Revenue Recovery Act for the time being in force.

CHAPTER V

EMPLOYMENT OF CHILDREN AND WOMEN

19. *Prohibition of employment of children.*—No child shall be required or allowed to work in any establishment except as an apprentice in such employment as may be specified by the Government.

20. *Prohibition of employment of women and persons below seventeen years during night.*—No woman or any person who has not attained the age of seventeen shall be required or allowed to work whether as an employee or otherwise in any establishment before 6 A. M. or after 7 P. M.

CHAPTER VI

HEALTH AND SAFETY

21. *Cleanliness, ventilation and lighting.*—(1) The premises of every establishment shall be kept clean and free from effluvia arising from any drain or privy or other nuisance and shall be cleaned at such times and by such methods as may be prescribed; and these methods may include lime washing, colour washing, painting, varnishing, disinfecting and deodorising.

(2) The premises of every establishment shall be ventilated in accordance with such standards and by such methods as may be prescribed.

(3) The premises of every establishment shall be sufficiently lighted during all working hours.

(4) If it appears to an Inspector that the premises of any establishment within his jurisdiction is not sufficiently kept clean or lighted or ventilated, he may serve on the employer an order in writing specifying the measures which, in his opinion, should be adopted and requiring them to be carried out before a specified date.

22. *Precaution against fire.*—In every establishment such precautions against fire shall be taken as may be prescribed.

23. *Appeals.*—Against any order of the Inspector under this Chapter, an appeal shall lie to such authority and within such time as may be prescribed; and the decision of the appellate authority shall be final and shall not be liable to be questioned in a Court of law.

24. *Apportionment of expenses under preceding sections.*—If any person, being either the owner or the occupier of an establishment who has incurred or is about to incur any expense for the purpose of securing that the requirments of section 21 or section 22 are complied with respect to the establishment, alleges that the whole or any part of the expense ought to be borne by any other person having an interest in the premises, he may apply to the court of the subordinate Judge having jurisdiction over the area in which the establishment is situated and that court may make such order concerning the expenses or their apportionment as appears to the court, having regard to all the circumstances of the case, including the terms of any contract between the parties, to be just and equitable, and any order made under this section may direct that any such contract as aforesaid shall cease to have effect in so far as it is inconsistent with the terms of the order.

Chapter VII

ENFORCEMENT AND INSPECTION

25. *Appointment of Inspectors.*—The Government may, by notification in the Gazette, appoint such Officers or such class of Officers as it thinks fit to be Inspectors for the purposes of this Act within such local limits as it may assign to them respectively.

26. *Powers and duties of Inspectors.*—Subject to any rules made by the Government in this behalf, an Inspector may, within the local limits for which he is appointed.—

(a) enter, at all reasonable times and with such assistants, if any, being persons in the service of the Government or of any local authority as he thinks fit, any place which is or which he has reason to believe is an establishment;

(b) make such inspection of the premises and of any prescribed registers, records and notices, and take on the spot or otherwise evidence of any person as he may deem necessary, for carrying out the purposes of this Act; and

(c) exercise such other powers as may be necessary for carrying out the purposes of this Act:

Provided that no one shall be required under this section to answer any question or give any evidence tending to incriminate himself.

27. *Inspector to be public servant.*—Every Inspector appointed under section 25 shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code.

28. *Employer to produce registers, records etc, for inspection.*—Every employer shall on demand produce for inspection of an Inspector all registers, records and notices required to be kept under and for the purposes of this Act.

CHAPTER VIII

OFFENCES, PENALTIES AND PROCEDURE

29. *Penalties.*—(4) Whoever contravenes any of the provisions of sections 6, 8, 9, 10, 11, 13, 14, 18, 21 and 22 shall on conviction be punishable with fine, which for a first offence, may extend to two hundred and fifty rupees and for a second or any subsequent offence, may extend to five hundred rupees.

(2) Whoever contravenes any of the provisions of sections 7, 19, 20, 28 and 30 shall, on conviction, be punishable with fine which may extend to fifty rupees.

(3) No court shall take cognisance of any offence punishable under this Act or any rule or order made thereunder unless the complaint is made—

(a) by the employee of an establishment either by himself or through the union of which he is a member within 3 months from the date on which the offence is alleged to have been committed; or

(b) by the Inspector within six moths from the date on which the alleged offence comes to his knowledge.

(4) No court inferior to that of a Magistrate of a Second Class shall try any offence punishable under this Act or any rules or orders made thereunder.

CHAPTER IX

MISCELLANEOUS

30. *Maintenance of registers and records and display of notices.*—Subject to the general or special orders of the Government, an employer shall maintain such registers and records and display on the premises of his establishment such notices as may be prescribed. All such registers and records shall be kept on the premises of the establishment to which they relate.

31. *Saving of certain rights and privileges.*—Nothing in this Act shall affect any rights or privileges which an employee in any establishment is entitled to on the date this Act comes into force, under any other law, contract, custom or usage applicable to such establishment or any award, settlement or agreement binding on the employer and the employee in such establishment, if such rights or privileges are more favourable to him than those to which he would be entitled under this Act.

32. *Indemnity.*—No suit, prosecution or other legal proceedings shall lie against any person for anything which is in good faith done or intended to be done under this Act.

33. *Delegation of powers.*—(1) The Government may, by notification in the Gazette, authorise any officer or authority subordinate to them to exercise all or any of the powers vested in them by or under this Act, except the power mentioned in Section 34, subject to such restrictions and conditions, if any, as may be specified in the notification.

(2) The exercise of the powers delegated under sub-section (1) shall be subject to control and revision by the Government or by such persons, as may be empowered by them in that behalf. The Government shall also have power to control and revise the acts or proceedings of any person so empowered.

34. *Power to make rules.*—(1) The Government may, by notification in the Gazette, make rules for the purposes of carrying into effect the provisions of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, rules made under sub-section (1) may provide in respect of the health, safety and welfare of employees.

(3) In making rules under this section, the Government may provide that a contravention of the rules shall be punishable with fine which may extend to fifty rupees.

(4) The power to make rules conferred by this section is subject to the condition of the rules being made after previous publication.

(5) All rules made under this section shall be laid for not less than seven days before the Legislative Assembly as soon as possible after they are made, and shall be subject to such modification as the Legislative Assembly may make during the session in which they are so laid or the session immediately following.

35. *Power of Government to suspend provisions of the Act during fairs and festivals.*—On any special occasion in connection with a fair or festival or a succession of public holidays, Government may, by notification, in the Gazette suspend for a specified period the operation of all or any of the provisions of this Act.

36. *Repeal of certain enactments.*—On and from the date of the commencement of this Act, in any area, the enactment specified in the Schedule shall stand repealed in so far as they apply to such area:

Provided that anything done under the said enactments which could have been done under this Act if it had then been in force shall be deemed to have been done under this Act.

SCHEDULE.

1. Weeklys Holiday Act, 1942 (Central Act 18 of 1942)
2. The Travancore-Cochin Shops and Establishments Act, 1125 (Act IX of 1125).
3. The Madras Shops and Establishments Act, 1947 (Madras Act XXXVI of 1947) in so far as it applies to the Malabar district referred to in section 5 (2) of the States Reorganisation Act, 1956.

STATEMENT OF OBJECTS AND REASONS.

The Law relating to the regulation of conditions of work and employment in shops, commercial establishments, restaurants, theatres and other establishments in force in the State is contained in the Travancore-Cochin Shops and Establishments Act, 1125 and the Madras Shops and Establishments Act, 1947. It is considered necessary to have a uniform law on the subject applicable to the whole State. The Bill seeks to achieve the above object.

FINANCIAL MEMORANDUM.

Clause 25 of the Bill provides for the appointment of Inspectors for the purpose of this Act. Under the existing Shops and Establishment Acts the Assistant Labour Officers are notified as Inspectors. There are three separate Inspectors appointed under the Shops and Establishment Act, at Trivandrum, Ernakulam and Kozhikode. They will continue to function as Inspectors under the present Act also. It is not proposed to appoint any more full time Inspectors under the Act. Therefore no additional expenditure from the consolidated Fund of the State will be involved by the passing of the Bill.

K. T. ATCHUTHAN.

REGISTERED No. M. 4631.

KERALA GAZETTE

EXTRAORDINARY

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Vol. V] Trivandrum, Thursday, 16th June 1960 / 26th Jyaistha 1882 [No. 41.

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Legislature Secretariat,
Trivandrum.

D. TIRUMALAI IYENGAR,
Secretary,
Legislative Assembly.

PRINTED AND PUBLISHED BY
THE S.G.P. AT THE GOVERNMENT PRESS, TRIVANDRUM.
1960.

L. A. Bill No. 12 of 1960.

THE KERALA WEIGHTS AND MEASURES (ENFORCEMENT) AMENDMENT BILL, 1960.

A

BILL

to amend the Kerala Weights and Measures (Enforcement) Act, 1958.

Preamble.—WHEREAS it is deemed necessary to amend the Kerala Weights and Measures (Enforcement) Act, 1958, for the purpose hereinafter appearing;

BE it enacted in the Eleventh Year of the Republic of India as follows:—

1. *Short title and commencement.*—(1) This Act may be called the Kerala Weights and Measures (Enforcement) Amendment Act, 1960.

(2) It shall come into force at once.

2. *Insertion of new section 40A.*—After section 40 of the Kerala Weights and Measures (Enforcement) Act, 1958 (Act 45 of 1958), the following section shall be inserted, namely:—

"40A. *Power of Government to exempt.*—The Government may, by notification in the Gazette, exempt, subject to such conditions and restrictions as they may think fit to impose,—

(i) any class of persons;

(ii) any commodity;

(iii) any trade or class of trades; or

(iv) any class of weights, measures or weighing or measuring instruments used or intended to be used for any purpose other than any trade or trades specified in the notification,

from all or any of the provisions of this Act, if the Government are satisfied that it is necessary so to do in the public interest."

STATEMENT OF OBJECTS AND REASONS

The Kerala Weights and Measures (Enforcement) Act, 1958 does not give Government or the Controllers general power to grant exemptions from the provisions of the Act. Such a power ll be necessary to permit the continued use of certain types f existing weighing and measuring instruments. Further it may not be practicable to convert all the machines in use to the metric system before the system is made compulsory. The machines which are not converted will have to be used with the help of conversion tables and such machines will have to be exempted from certain provisions of the Act until they are co verted. It is therefore proposed to amend the Act so that the Government may have power to grant exemptions if it becomes necessary in public interest. The Bill is intended to achieve the above object.

K. CHAND AN.